have lain at common law, it could be brought at any time within the period limited, by the statute of William. This judgment rests upon the ground, that the neglect in question and which resulted in the loss of the cattle, was a wrong to personal property within the sense of those terms in the statute, and it is in consequence plain that this judgment is of much authority in our present investigation, unless a difference can be established with respect to principle, between a loss of particular cattle by a neglect and the loss of particular moneys from the same cause. I cannot perceive such difference.

In Massachusetts, a literal interpretation has been put upon the statute of that state upon this subject, a result which may, in a degree be accounted for by the peculiar frame of the act, which is in the nature of an enumeration of the classes of cases in which actions shall survive and which enumeration would upon admitted principles, tend to contract the scope of the general terms used in the subsequent part of the section.

The judgment, I think, should be for the plaintiff in the present case.

United States Circuit Court, Eastern District of Pennsylvania.

EDWARD SCHUBERTH & Co. *v.* W. F. SHAW.

Any substantially new adaptation of an old piece of music constitutes a valid subject for copyright.

In the Circuit Court for the Eastern District of Pennsylvania.

In 1872 a Frenchman composed a piece of music under the title of "Manola suite de Valses pour piano." In 1875 J. M. Lauder, an American musician, made a *new* arrangement of the waltz which he sold to plaintiffs, who copyrighted the same as proprietors under the name and style of "Manola Waltz, as played and arranged for piano by J. M. Lauder." The defendant, W. F. Shaw, a musical publisher, issued a composition under title of "Manola Waltz, as performed by J. M. Lauder."

A bill was thereupon filed charging an infringement of the copyright and asking an injunction. The defendant in his answer and evidence contended that there was no musical authorship in the arrangement of Lauder, and that the plaintiffs, as proprietors, could not avail themselves of the benefit of the copyright.

On the argument, BUTLER, J., made an interlocutory decree, "that two musicians should report if the Lauder composition was *musically* different from that of the French composer, and whether in their judgment and opinion the publication of plaintiffs' is an original composition, representing any musical authorship."

The experts made report that, "with the exception of the harmony in the last three bars, they did not consider the publication of the plaintiffs' an original composition," but did regard it "as an original arrangement and the work of a practical harmonist and musician."

David W. Sellers, for plaintiffs, moved for the injunction, and cited, *Metzler* v. *Wood*, Law Rep. 8 Ch. Div. 606; Drone on Copyrights 175.

Joseph R. Sypher, for defendant, *contra*, cited, Morgan Law of Literature, vol. 2, chap. 7, 693.

BUTLER, J.—Under the construction given to sect. 4952 of the Revised Statutes, relating to copyrights, the plaintiffs' claim must be regarded as valid. To entitle one to a copyright it is unnecessary that he be the sole creator of the work for which protection is claimed. Labor bestowed on the production of another will often constitute a valid claim. The maker of an abridgement, translation, dramatization, digest, index or concordance of a work of which he is not the author, may obtain a copyright for the product of his labor, thought and skill. So also one making material changes, additions, corrections, improvements, notes, comments, &c., in the unprotected work of another. A photograph, chromo or engraving is often but a copy of a work of art, in whose production the photographer or engraver had no part: *Wood* v. *Boosey*, Law Rep. 3 Q. B. 232. In all such cases, the test of originality is applied to that which represents the labor or skill of the person claiming the copyright: Drone on Copyright 200. In music, not only new compositions, but any substantially new adaptation of an old piece, as an arrangement for the piano of a quadrille waltz, &c., constitutes a valid claim: *Atwill* v. *Ferrett*, 2 Blatchf. 39; *Jollie* v. *Jaques*, 1 Id. 618.

The report of the commissioners (Messrs. Thunder & Hasler), leaves me in no doubt respecting the validity of the plaintiff's copyright. Nor can I doubt that the defendants' publication is a substantial copy of the plaintiff's. His artist, Mr. A'Becket, under-

standing what was wanted, sought to do materially what the plaintiffs had done. The defendant's design was to procure a similar work. The evidence shows this quite distinctly. Mr. A'Becket had not as he says, the plaintiff's work before him; but he was familiar with it and was, I think, mainly guided in what he did, by his recollection of it. The imitations, in some instances extending even to errors, seem too remarkable to be accidental. The slight, unimportant differences may well be ascribed to a desire to avoid the charge of copying. It is, I repeat, quite plain that the defendant started out with the design to publish and offer for sale, a work similar to the plaintiff's; and this similarity is carried even into the title page; which is made so like the plaintiff's, that any one purchasing might well suppose he was getting the plaintiff's work. The answer indeed admits that the defendant's publication "is substantially the same as the complainant's." Let a decree be entered for the plaintiff.

United States Circuit Court, Eastern District of Pennsylvania.

HALL *v.* PENNSYLVANIA RAILROAD COMPANY.

A common carrier is liable for loss of goods in his charge, from any cause, except the act of God, or of the public enemy. When he has received the goods under a bill of lading his liability continues, as at common law, except as regards losses by causes enumerated as exceptions in the bill of lading, without negligence on his part.

His duty being to transport goods without unreasonable delay, any injurious interruption of such transport, by the refusal of his servants or employees to perform their duty, would make him liable for damages.

A strike of its employees is therefore no defence to a railroad company in an action for damages for delay in transportation.

A mob is not "the public enemy," and destruction of goods by it, will not excuse the carrier, although its force was greater than he was able to resist, and although he promptly called upon the civil authorities for protection.

But where goods were accepted by a carrier under a bill of lading, by which he was not to be liable for loss by fire without negligence on his part, and the goods were stopped on their transit for two days, and then burned by a mob, it was held that negligence could not be imputed to the carrier, and the loss was within the exception of the bill of lading.

THIS suit was brought to recover from the defendant the value of certain wool, delivered to it at Chicago for transportation to Philadelphia. A jury having been waived, the case was tried by the court upon the evidence submitted by the parties. The following facts were found as established by the evidence: